HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION No.11826 of 2005

AND

CONTEMPT CASE No.521 of 2005

Writ Petition No.11826 of 2005

Between:

Jana Vignana Vedika, Andhra Pradesh,

Hyderabad & another. ... Petitioners

AND

Government of Andhra Pradesh, rep. by

its Principal Secretary, Medical and Health

Department, Secretariat, Hyderabad & another. …Respondents.

Counsel for the Petitioners : Mr.V. Ajay Kumar

Counsel for Respondent No.1 : Government Pleader for Medical & Health.

Counsel for Respondent No.2 : Mr.T.Amarnath Goud

Amicus Curiae : Advocate General

Contempt Case No.521 of 2005

Between:

Dr.C.L.Venkat Rao ... Petitioner

AND

Mr. Ranga Rao, Director General of Drugs,

Hyderabad & others. …Respondents.

Counsel for the Petitioner : Mr.K.G.K. Prasad

Counsel for Respondent No.1 :

Counsel for Respondent Nos.1 to 5 : Government Pleader for Medical

and Health.

Counsel for Respondent Nos.6, 8 & : Mr.A.Rajashekar Reddy,

9 Asst.Solicitor General

Counsel for Respondent No.7 : Mr.S.Niranjan Reddy

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:: O R D E R ::

25th JANUARY 2006

Per G.S.Singhvi, C.J.

In this petition filed in the name of public interest, the petitioners have made for the following substantive prayer:-

> "……..it is prayed that this Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus by declaring the action of 1st respondent in not taking

steps by collecting the sample of the fish medicine being distributed by 2nd respondent every year at Hyderabad and not testing it at Indian Council of Medical Research or any other authorised, competent Government Laboratory, as illegal, arbitrary and violative of Articles 21 and 51A(h) of the Constitution of India, and consequently direct 1st respondent to collect the sample of the fish medicine to be distributed by 2nd respondent on 8th June, 2005, at Exhibition Grounds, Nampally, Hyderabad and to test it by the Indian Council of Medical Research or any other authorised, competent, reliable accredited laboratory, and to take steps based on the test report in terms of the provisions of the Drugs and Cosmetics Act, 1940 and rules made thereunder."

On 7-6-2005 this Court, after taking cognizance of the test reports obtained from a private laboratory suggesting that there were steroids in the fish medicine and a contrary report collected by the government suggesting that there were no steroids, directed the Director of Health Services, Andhra Pradesh to collect at least 10 doses of the medicine and preserve them for analysis in future. On 14-6-2005, the Court directed that samples collected in pursuance of order dated 7-6-2005 be got tested in Indian Institute of Chemical Biology, Kolkata, Centre for Cellular and Molecular Biology, Hyderabad, and Indian Council of Medical Research, New Delhi. However, Centre for Cellular and Molecular Biology, Hyderabad informed the Court that it does not have technical expertise and facilities to undertake chemical analysis of the sample. Indian Institute of Chemical Biology, Kolkata submitted its report to the Court. After going through that report, the Court passed order dated 15-9-2005 whereby the Director of Health Services was directed to obtain information from the laboratory regarding composition of the samples and the properties of each constituent of the sample. On
14-11-2005 the Court passed the following order:

"Reports have been obtained from two laboratories. Copies of these reports shall be furnished to the Director of Nizam's Institute of Medical Sciences (NIMS), Hyderabad within one week by respondent No.1.

The Director of NIMS shall constitute a committee of experts to examine these reports and apprise this Court of its opinion on the following questions:

1. Whether the constituents of the drug in anyway are helpful in treating 'Asthma'.

2. Whether the constituents found in the samples are in anyway injurious to health.

3. Whether irrespective of any medicinal properties, positive or negative, could this drug be administered to human beings?

List after four weeks."

Thereafter, Director, Nizams Institute of Medical Sciences, Hyderabad constituted a committee of experts comprising Prof.M.U.R. Naidu, Head of Department, Clinical Pharmacology and Therapeutics and Dr.T. Manmadha Rao, Associate Professor, Pulmonologist, Department of Medicine. The committee gave report dated 29-11-2005 that it cannot evaluate the chemical and invitro assay report on fish medicine submitted by CDRI and IICB in the absence of any data on clinical studies.

On 15-12-2005 we asked the learned Advocate General to assist the Court as an Amicus.

We have gone through the various reports and other material placed on the record of the writ petition.

Learned Advocate General says that even though the substance being administered by respondent No.2 is not shown to contain anything which can cure Asthma, there is nothing therein from which it can be inferred that the substance is harmful to human beings.

Learned counsel for the petitioners and counsel appearing for Dr. C.L. Venkat Rao, who has filed Contempt Petition No.521 of 2005, say that even though the substance being administered by respondent No.2 and associates may not be containing any substance harmful to the human body, the Court should intervene and prevent them from misleading the people in believing that the said substance is useful in curing Asthma.

In our opinion, it is not possible to issue direction in terms of the prayer made by the petitioners because the administration of substance by respondent No.2 and his associates does not result in violation of any provision of the Drugs and Cosmetics Act or any other provision of law.

The plea of the learned counsel for the petitioners that the Court may issue direction for preventing the collection of lakhs of people at Hyderabad for receiving substance

along with the fish being administered by respondent No.2 and his associates cannot be accepted for the simple reason that on his part respondent No.2 and his associates have not issued any advertisement that they have been administering any drug which has the effect of curing the disease like 'Asthma'.

In the result, the writ petition is disposed of and the proceedings of contempt petition are closed. However, liberty is given to the petitioners to again seek court's intervention if they are materially able to show that the substance being administered by respondent No.2 and his associates is harmful to the human bodies or the said respondent acts in violation of any provision of law.

G.S. SINGHVI, C.J.

25th January, 2006.

G. BHAVANI PRASAD, J.

ARS / svs